



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,728	11/29/2000	William P. Acker	MTIP001US	9617

27949 7590 05/15/2002

LAW OFFICE OF JAY R. YABLON
910 NORTHUMBERLAND DRIVE
SCHENECTADY, NY 12309-2814

EXAMINER

CREPEAU, JONATHAN

ART UNIT	PAPER NUMBER
----------	--------------

1745

3

DATE MAILED: 05/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

1115-3

Office Action Summary

Application No.

09/725,728

Applicant(s)

ACKER ET AL.

Examiner

Jonathan S. Crepeau

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-19, 21-24 and 26-39 is/are allowed.
- 6) ☒ Claim(s) 5, 20, 25 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claims 5 and 25 recite various upper and lower values of the methanol in the methanol/water mix. There does not appear to be a specific disclosure of these values in the specification. On page 15, line 9, the specification discloses "...with methanol concentration variations between 1% and 100% being possible and desirable depending on technology, operating conditions, and load." Accordingly, the recitation of the individual values in the claims does not appear to be properly supported by the specification in its current state. Correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite that the upper range boundary of methanol in the methanol/water mix can be 100%. However, in the event that the methanol concentration is

Art Unit: 1745

100% (i.e., pure methanol), claims 5 and 25 fail to properly limit parent claims 3 and 23, which require the presence of both methanol and water. Correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 20 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Edlund et al (U.S. Patent 6,383,670). In Figure 3 and in column 5, lines 42-46, the reference teaches a fuel cell system comprising a controller (28) for receiving an input of a fluid level measurement of fuel tanks (78, 80). The controller subsequently directs fluid to be automatically added to the tanks. In column 3, lines 21-34, the reference further teaches that the communication pathway may be a telecommunications link (e.g., radio frequency, wireless signals).

Thus, the instant claims are anticipated.

Allowable Subject Matter

6. Claims 1-4, 6-19, 21-24, and 26-39 are allowed.
7. Claims 5 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.
8. The following is a statement of reasons for the indication of allowable subject matter:

Independent claims 1, 13, 21, and 33 recite fuel cell systems comprising sensors for measuring the dielectric constants of a fuel mix or fuel tank. The closest prior art, Kumagai et al (U.S. Patent 4,810,597), discloses in Figure 1 a tank (13) which contains a methanol/water mixture and a sensor (10) which measures methanol concentration, but fails to teach or suggest a dielectric constant sensor. WO 01/23876 and WO 01/13451 both disclose relevant subject matter (dielectric constant measurements in direct methanol fuel cells), but these references fail to qualify as prior art. Accordingly, the instant claims are allowable.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Crepeau whose telephone number is (703) 305-0051. The examiner can normally be reached Monday-Friday from 9:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan, can be reached at (703) 308-2383. The phone number for the organization where this application or proceeding is assigned is (703) 305-5900. Additionally, documents may be faxed to (703) 305-5408 or (703) 305-5433.

Application/Control Number: 09/725,728
Art Unit: 1745

Page 5

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

JSC

May 12, 2002


Patrick Ryan
Supervisory Patent Examiner
Technology Center 1700